

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the Child
Foster Care License of Theresa Lloyd
and Siegel Howard

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on November 9, 2005, at the Office of Administrative Hearings, 100 Washington Avenue South, in Minneapolis. Based on the agreement of the parties, the Administrative Law Judge left the record open following the close of the hearing to allow both parties to submit additional documentation. The OAH record closed on November 29, 2005.

David F. MacMillan, Assistant Ramsey County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102-1556, appeared on behalf of the Ramsey County Community Human Services Department ("Ramsey County") and the Department of Human Services.

Theresa Lloyd and Siegel Howard, 1035 Lafond Avenue, St. Paul, MN 55104, appeared for themselves without counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Did the Department properly conclude that Theresa Lloyd and Siegel Howard should not be issued a license to provide child foster care for a relative because both are disqualified?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Theresa Lloyd and her husband Siegel Howard live in St. Paul, Minnesota. They have two children, now aged five and two.¹ Ms. Lloyd was born on February 1, 1974, and Mr. Howard was born on December 31, 1969.²

2. In August of 1989, Mr. Howard pleaded guilty in Ramsey County District Court to one felony count of possessing a controlled substance (cocaine) with intent to distribute in violation of Minn. Stat. § 152.09. Mr. Howard was sentenced to 21 months. The court stayed execution of his sentence and placed Mr. Howard on probation for 15 years. As a condition of his probation, Mr. Howard served approximately four months in the Ramsey County workhouse.³

3. In December of 1989, shortly after he was released from the workhouse, Mr. Howard was charged in Ramsey County District Court with one felony count of possessing a controlled substance. Mr. Howard was later convicted of a federal drug offense and sentenced to approximately 10 years in federal prison. He served approximately 8 years, was released from prison in 1997, and was discharged from probation on September 25, 2002.⁴

4. While in prison, Mr. Howard completed several business computer courses, quality assurance inspector training courses, and forty hours of drug education.⁵

5. On April 6, 1993, Ms. Lloyd was arrested and charged with one felony count of 3rd degree sale of narcotics in violation of Minn. Stat. § 152.023. Ms. Lloyd was with her boyfriend at the time, and the drugs were found in her car.⁶

6. On August 30, 1993, Ms. Lloyd pleaded guilty in Ramsey County District Court to one felony count of 3rd degree sale of narcotics in violation of Minn. Stat. §

¹ Ex. 15.

² Exs. 1 and 9.

³ Exs. 9 and 10; Testimony of Howard.

⁴ Exs. 9 and 10; Testimony of Howard; Notice of Discharge from Probation (September 25, 2002).

⁵ Certificates of course completion (1992-1994).

⁶ Exs. 1 and 3.

152.023. The court stayed adjudication of guilt and placed Ms. Lloyd on probation for 20 years, with the condition that she serve 75 days at Volunteers of America. On September 9, 1997, Ms. Lloyd violated a condition of her probation, and her stay of adjudication was changed to a stay of imposition. Ms. Lloyd was discharged from probation on April 25, 2003, and her felony conviction was reduced to a misdemeanor.⁷

7. On April 29, 2004, Ms. Lloyd and Mr. Howard applied to Ramsey County Human Services for a license to provide child foster care to Ms. Lloyd's 15-year old cousin, E.Q.⁸ At the time of their application, E.Q. had been living with Ms. Lloyd's mother, Bobbie Lloyd, for approximately two years. However, because of E.Q.'s behavioral and truancy problems, both Bobbie Lloyd and Theresa Lloyd believed that Theresa Lloyd's home would be a better placement for E.Q.⁹

8. In July of 2004, a Ramsey County child foster care placement worker agreed to place E.Q. with Theresa Lloyd and Siegel Howard on an emergency basis.¹⁰

9. As part of the license application process, Ms. Lloyd and Mr. Howard consented to a background study.¹¹

10. Ida Njee, a Ramsey County child foster care intake worker, received Ms. Lloyd's and Mr. Siegel's license applications and conducted background studies on both of them.¹²

11. By letter dated November 16, 2004, Ms. Njee informed Ms. Lloyd that she was disqualified from providing child foster care due to her 1993 criminal conviction on the drug offense described above.¹³ In the letter, Ms. Njee notified Ms. Lloyd of her right to request reconsideration of the disqualification.

12. On December 2, 2004, Ms. Lloyd timely requested reconsideration of her disqualification. In her request for reconsideration, Ms. Lloyd pointed out that since her 1993 drug conviction she has obtained a certificate for medical coding and a medical secretary diploma from the St. Paul Technical College and has been gainfully employed in the medical billing field for a number of years. She has worked at Model Cities Health Center as a Patient Account Clerk for three years, University Affiliated Family Physicians for three years, and is currently employed as a Billing Specialist with Open Cities Health Center. In addition, Ms. Lloyd explained that she and E.Q. have grown close over the years and that she believes it would be in E.Q.'s best interest to be placed in the care of her and her husband.¹⁴

13. By letter dated December 29, 2004, Ms. Njee informed Mr. Howard that he was disqualified from providing child foster care due to his felony convictions for drug

⁷ Ex. 1; Testimony of Lloyd; Order Discharging Lloyd from Probation (April 25, 2003).

⁸ Exs. 1 and 9.

⁹ Testimony of Theresa Lloyd.

¹⁰ Testimony of Theresa Lloyd; See Minn. Stat. § 245A.035.

¹¹ Exs. 1 and 9.

¹² Testimony of Njee.

¹³ Ex. 2.

¹⁴ Ex. 3.

possession in 1989 and 1990.¹⁵ In the letter, Ms. Njee notified Mr. Howard of his right to request reconsideration of the disqualification.

14. On March 11, 2005, Mr. Howard requested reconsideration of his disqualification. Although Mr. Howard's reconsideration request was not timely, Ramsey County processed his request as if it were timely.¹⁶

15. On April 6, 2005, the Ramsey County Foster Care Licensing "Relative Review" Committee met to consider Ms. Lloyd's and Mr. Howard's requests for reconsideration of their disqualifications. The nine-member Committee included the supervisor of the Ramsey County licensing unit, two intake workers, licensing workers for relative foster care applications, and one child protection worker. The Committee recommended that Ms. Lloyd's and Mr. Howard's reconsideration requests be denied and that neither be granted a variance.¹⁷

16. By letter dated April 7, 2005, Ms. Njee recommended that the Department of Human Services deny Ms. Lloyd's and Mr. Howard's license applications based on their disqualifications.¹⁸ In her letter, Ms. Njee stated incorrectly that Ms. Lloyd is disqualified from licensure until 2028 for her 1993 drug conviction.¹⁹ In fact, because Ms. Lloyd was discharged from probation in April 2003 and her felony conviction reduced to a misdemeanor, her disqualification period is seven years ending in April 2010.²⁰

17. In separate letters dated July 19, 2005, the Commissioner of Human Services informed Ms. Lloyd and Mr. Howard that, after reviewing the information in their files and conducting risk of harm assessments, he had decided not to set aside their disqualifications and not to grant them variances. The letters stated that the Commissioner applied all eight factors set forth in Minn. Stat. § 245C.22, subd. 4, and considered the importance of maintaining the child's relationship with relatives as required by Minn. Stat. § 245A.035, subd. 5. The Commissioner informed Ms. Lloyd and Mr. Howard that an order denying their application for licensure would follow by separate letter.²¹

18. In deciding not to set aside Ms. Lloyd's disqualification, the Commissioner found the following factors to be determinative: (1) the vulnerability of E.Q. based on her age; (2) Ms. Lloyd's failure to take responsibility for her actions; (3) Ms. Lloyd's failure to provide any evidence of rehabilitation; and (4) Ms. Lloyd's failure to submit a police report and probation officer report as requested. The Commissioner explained that without any information regarding rehabilitation, there was no evidence that Ms. Lloyd has undergone changes in her behavior or attitude that will make it unlikely that she will commit a similar act. The Commissioner also explained that because Ms. Lloyd failed

¹⁵ Ex. 11.

¹⁶ Ex. 12; Testimony of Njee.

¹⁷ Exs. 5 and 13; Testimony of Njee.

¹⁸ Ex. 6.

¹⁹ Ex. 6.

²⁰ Order Discharging Probationer (Theresa Lloyd) dated April 25, 2003; Minn. Stat. § 245C.15, subds. 2(e) and 4.

²¹ Exs. 7 and 14.

to submit the police and probation reports, he does not know the details of her offense or any progress she has made toward rehabilitation.²²

19. In deciding not to set aside Mr. Howard's disqualification, the Commissioner found the serious nature of Mr. Howard's drug offenses, the vulnerability of E.Q., and the lack of evidence of rehabilitation to be determinative factors. The Commissioner also found that Mr. Howard's criminal record demonstrated a pattern of behavior that indicates he may pose a risk of harm to children in his care.²³

20. On July 19, 2005, the Department of Human Services issued an Order denying Ms. Lloyd's and Mr. Howard's applications to provide child foster care. The Order notified Ms. Lloyd and Mr. Howard of their right to appeal.

21. Ms. Lloyd and Mr. Howard filed a timely request for appeal.²⁴ In their request for appeal, Ms. Lloyd pointed out that the drug convictions at issue are over 10 years old, that both she and Mr. Howard were very young when they committed their crimes, and that neither she nor Mr. Howard have had any violations of the law since that time. Ms. Lloyd also stated that she and Mr. Howard have learned from their mistakes and deserve a second chance. In addition, Ms. Lloyd emphasized that she and Mr. Howard own their own home and can provide E.Q. with a stable family environment. Finally, Ms. Lloyd stated that during the year that E.Q. was placed in their home, they stayed in regular contact with E.Q.'s social worker (Judy Johns) and E.Q. showed improvement in her behavior and performance at school.²⁵

22. Ramsey County removed E.Q. from the home of Ms. Lloyd and Mr. Howard in July of 2005. She is currently living with Bobbie Lloyd.²⁶

23. E.Q. is now 16-years old and attends Harding High School. On September 23, 2005, she gave birth to a baby daughter.²⁷

24. On October 6, 2005, the Department issued a Notice of and Order for Hearing. In the exhibit attached to the Order the Department stated incorrectly that Ms. Lloyd was convicted of a controlled substance crime on September 9, 1997.²⁸

25. A protective order was entered in this matter on October 10, 2005.

26. Mr. Howard is currently employed as a mental health worker with the Acute Psychiatric Service at Hennepin County Medical Center (HCMC). In this position, Mr. Howard has direct contact with persons receiving services from HCMC's Crisis Intervention Center. Because of Mr. Howard's felony drug convictions, he was disqualified from working in a position allowing direct contact with persons receiving services from providers licensed by the Department of Health. Mr. Howard sought reconsideration of his disqualification and on October 25, 2005, the Commissioner of Health set aside his disqualification from providing services for HCMC. As a result,

²² Ex. 7.

²³ Ex. 14.

²⁴ Ex. 8.

²⁵ Ex. 8.

²⁶ Testimony of Theresa Lloyd.

²⁷ Testimony of Theresa Lloyd.

²⁸ Exhibit A attached to the Notice of and Order for Hearing.

Hennepin County Medical Center may continue to employ Mr. Howard as a mental health worker.²⁹

27. Michael D. Greene, Mr. Howard's supervisor at HCMC, submitted a letter of recommendation on behalf of Mr. Howard. According to Mr. Greene, Mr. Howard is a stable and dependable employee who remains even tempered and composed in stressful work situations. Mr. Greene also noted that Mr. Howard consistently treats the patients with kindness, respect and compassion.³⁰

28. Prior to working at HCMC, Mr. Howard was employed for about three years as a housekeeper and later a housekeeping manager at the Holiday Inn in Arden Hills, Minnesota. In a letter of recommendation, Mr. Howard's former supervisor, Judith Marxhausen, described Mr. Howard as a responsible employee with a positive attitude.³¹

29. Anita Wilson, Ms. Lloyd's supervisor at Open Cities Health Center, submitted a letter of recommendation on behalf of Ms. Lloyd. Ms. Wilson described Ms. Lloyd as a very organized, hard-working, dependable and dedicated employee.³² Rose Foote, the Human Resources Manager at Open Cities Health Center, also submitted a letter of recommendation on behalf of Ms. Lloyd. She described Ms. Lloyd as a committed and reliable employee with a positive attitude and a willingness to help others.³³

30. E.Q. prefers to live with Theresa Lloyd and Siegel Howard. In a letter written in support of Ms. Lloyd's and Mr. Howard's reconsideration requests, E.Q. stated that during the year she lived with Ms. Lloyd and Mr. Howard, they cared for her as if she was their own daughter and gave her the love and support she needed.³⁴

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § § 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Ramsey County have complied with all procedural requirements of law and rule.

²⁹ Ex. 15.

³⁰ Ex. 15 (November 2, 2005, letter from Michael Graves, Health Services Supervisor, HCMC).

³¹ Ex. 15.

³² Ex. 4.

³³ Ex. 15 (October 14, 2005, letter from Rose Foote, Human Resource Manager, Open Cities Health Center).

³⁴ Ex. 15.

4. At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the applicant has complied fully with this chapter and other applicable law or rule and that the application should be approved and a license granted.³⁵

5. The commissioner shall disqualify an individual from a position allowing direct contact with persons receiving services from the license holder when a background study shows conviction of or admission to one or more crimes listed in Minn. Stat. § 245C.15, or when a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the listed crimes.³⁶

6. An individual is disqualified if less than 15 years have passed since the discharge of the sentence for a felony conviction under Minn. Stat. § 152.09.³⁷ Based on their felony-level convictions for controlled substance possession, both Ms. Lloyd and Mr. Howard are disqualified under Minn. Stat. § 245C.14.

7. Mr. Lloyd's probationary period for his state drug conviction appears to have expired in 2004. His disqualification period would be seven years from that point in time, ending in 2011.³⁸ Mr. Lloyd was discharged from probation on the federal drug offense on September 25, 2002. His disqualification period for that offense may be 15 years ending in September 2017.³⁹

8. Ms. Lloyd was discharged from probation on April 25, 2003. Because her conviction was reduced to a misdemeanor, her disqualification period is seven years ending in April 2010.⁴⁰

9. In determining whether a disqualification should be set aside because the person no longer poses a risk of harm, the Commissioner is to consider the nature, severity, and consequences of the event or events that led to disqualification; whether there is more than one disqualifying event; the age and vulnerability of the victim at the time of the event; the harm suffered by the victim; the similarity between the victim and persons served by the program; the time elapsed without a repeat of the same or similar event; documentation of successful completion by the individual studied of training or

³⁵ Minn. Stat. § 245A.08, subd. 3(b).

³⁶ Minn. Stat. § 245C.14, subd. 1(a)(1), (2).

³⁷ Minn. Stat. § 245C.15, subd. 2(a).

³⁸ Because he received a misdemeanor level sentence, the disqualification period is seven years pursuant to Minn. Stat. § 245C.15, subds. 2(e) and 4.

³⁹ This would be the appropriate disqualification period assuming his offense is considered to be "a felony-level conviction involving alcohol or drug use" under Minn. Stat. § 245C.15, subd. 2. Although Chapter 245C provides that an individual's offense "in any other state or country" may be a disqualification where the elements are substantially similar to those identified in Chapter 245C, it does not specifically identify any federal offenses as disqualifying characteristics. See Minn. Stat. § 245C.15, subds. 1(c), 2(c), 3(c), and 4(d). Neither the Commissioner's Order nor the parties addressed the issue whether this federal crime could be considered a disqualifying characteristic under Chapter 245C.

⁴⁰ Minn. Stat. § 24C.15, subds. 2(e) and 4.

rehabilitation pertinent to the event; and any other information relevant to reconsideration.⁴¹

10. In licensing a relative for foster care, the Commissioner shall consider the importance of maintaining the child's relationship with relatives as an additional significant factor in determining whether to set aside a licensing disqualifier under Minn. Stat. § 245C.22.⁴²

11. Based upon consideration of all of these factors, and considering the importance of maintaining E.Q.'s relationship with her cousin as an additional significant factor, Ms. Lloyd has submitted sufficient information to demonstrate that she does not pose a risk of harm to E.Q. and that her disqualification should be set aside.

12. Mr. Howard has a record of two serious drug offenses, and the time elapsed without a repeat of a same or similar event is shorter than Ms. Lloyd's when the length of his incarceration is considered. Although his evidence of rehabilitation is commendable, the Administrative Law Judge cannot recommend setting aside his disqualifications at this time.

13. Because Ms. Lloyd and Mr. Howard are married and share a household, the Commissioner properly denied their application for a child foster care license based on Mr. Howard's disqualifications.⁴³

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner's order denying the application of Theresa Lloyd and Siegel Howard for a child foster care license be **AFFIRMED**, unless the Commissioner determines after review of the hearing record that a variance should be issued concerning Mr. Howard's presence in the home.

Dated this day of December 29, 2005.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Taped (two tapes)

⁴¹ Minn. Stat. § 245C.22, subd. 4.

⁴² Minn. Stat. § 245A.035, subd. 5.

⁴³ Minn. Stat. § 245C.14 (an individual who is disqualified may not have access to persons receiving services.)

MEMORANDUM

The Department of Human Services disqualified Theresa Lloyd and Siegel Howard from providing child foster care based on their felony-level drug convictions. Section 245C.22 of the Minnesota Statutes allows the Commissioner to set aside a disqualification if he finds that the individual has submitted sufficient information to demonstrate that he or she does not pose a risk of harm to any person served by the applicant. The factors to be considered in determining whether an individual poses a risk of harm are: the nature, severity, and consequences of the event or events that led to disqualification; whether there is more than one disqualifying event; the age and vulnerability of the victim at the time of the event; the harm suffered by the victim; the similarity between the victim and persons served by the program; the time elapsed without a repeat of the same or similar event; documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and any other information relevant to reconsideration.

The Commissioner considered the risk of harm factors identified above in making his determination that the disqualifications not be set aside. With respect to Ms. Lloyd, the Commissioner found the lack of information regarding the details of her offense and the lack of evidence regarding rehabilitation to be determinative factors in deciding not to set aside her disqualification. Likewise, the Commissioner found the lack of evidence regarding Mr. Howard's rehabilitation to be a determinative factor. The Commissioner also found that Mr. Howard "may pose a risk of harm to children" based on his criminal record.

During and after the hearing in this matter, Ms. Lloyd and Mr. Howard provided additional significant information regarding their offenses and rehabilitation. Specifically, both Ms. Lloyd and Mr. Howard have been successfully discharged from long probationary terms. Both have successfully completed training and have been gainfully employed for a number of years. Both submitted letters of recommendation from their employers, pastor, and childrens' teacher. The letters describe Ms. Lloyd and Mr. Howard as responsible employees and involved and loving parents. In addition, more than 15 years have elapsed since Mr. Howard's drug offenses, and more than 12 years have elapsed since Ms. Lloyd's conviction. At the time they committed their crimes, both Ms. Lloyd and Mr. Howard were 19 years old. Although serious in nature, their controlled substance crimes were not crimes of violence and there were no identifiable victims. Moreover, since that time they have committed no other crimes and instead have married, bought a house, maintained employment, and become involved in their childrens' school.

With respect to Ms. Lloyd, given the time elapsed without any additional criminal convictions, the lack of any similarity between the "victims" of her crime and E.Q., the documentation of her successful completion of training and continued employment, the legislative requirement that consideration be given to maintaining a foster child's relationship with relatives, and E.Q.'s expressed preference to be placed with Ms. Lloyd, the Administrative Law Judge is persuaded that the evidence presented is sufficient to conclude that Ms. Lloyd poses no risk of harm to children and that her disqualification should be set aside.

For the reasons stated in the Conclusions above, the ALJ does not recommend setting aside Mr. Howard's disqualifications; however, given the development of the record since the time of the Commissioner's Order denying the application, the Commissioner may wish to review the hearing record to determine whether a variance should be issued to permit his presence in a licensed foster home.

K.D.S.